

### REMARKS

1           The Examiner objected to claims 24-25 because of the informality "the said".  
Applicant has made the appropriate corrections to claims 24-25 to overcome the  
Examiner's objection as set forth above. The Examiner indicated that claims 9, 16 and  
5   20-23 would be allowable if rewritten to overcome any rejections under 35 U.S.C. § 112,  
second paragraph, and to include all of the limitations of the base claim and any  
intervening claims. New claims 26-29 have been added as set forth above. Claim 9  
has been rewritten as new claim 26, and comprises each of the limitations of original  
claims 1, 2, 3, 4, 5, 8 and 9. Claim 16 has been canceled and rewritten as new claim 27  
10   to include all of the limitations of original claims 1 and 16. Claim 20 has been canceled  
and rewritten as new claim 28 to include each of the limitations of original claims 1, 18,  
19 and 20. Also, claim 22 has been canceled and rewritten as new claim 29 to include  
each of the limitations of original claims 1, 18, 19 and 22. Claims 21 and 23 have been  
15   amended to depend from new independent claim 28. Accordingly, applicant believes  
that claims 21, 23, 26, 27 and 28 are allowable.

          The Examiner rejected claims 1-4 and 17 under 35 U.S.C. § 102(b) as being  
anticipated by Seel et al. Applicant respectfully disagrees with the Examiner's rejection.  
20   Claim 1 specifically recites that a lower portion is selectively movably positioned on a  
supporting surface so as to have a full range of movement with respect thereto. Claim 1  
continues by reciting that the foot support has a retaining portion for supporting a  
person's foot therein and resisting the upward, traverse and longitudinal motion of the  
person's foot with respect to the device. This language clearly distinguishes Seel. The  
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1 specification of the present invention makes clear that this device is used to exercise  
the entire range of movement of the ankle. As stated in the claims, the person's foot is  
positioned in the retaining portion for resisting movement of the foot.

5 Seel simply does not teach or otherwise disclose these limitations. As shown in  
all of the figures of Seel, a person's foot is merely positioned on top of a disk. A person  
is only inhibited from pushing his foot downward through the disk. There is absolutely  
no retaining portion where the foot is positioned in the retaining portion to resist the  
entire range of movement of a foot. Furthermore, contrary to the Examiner's statement,  
10 reference numeral 122 is not a retaining portion. In the specification of Seel, reference  
numeral 122 is described as cross ribs which prevent slippage of the foot on the  
platform. As understood from the specification and the figures, these cross ribs are  
merely grip portions which prevent slippage at the very least, they could not prevent the  
upward motion, as claimed within claim 1. Accordingly, applicant asserts that claim 1 is  
15 clearly allowable over the Examiner's rejection.

Regarding claims 2-4 and 17 of the present invention, applicant asserts that Seel  
does not teach or otherwise suggest such structure. Specifically regarding claim 17,  
Seel does not teach a foot support and retaining portion being selectively removably  
20 secured to the device. Moreover, claims 2-4 and 17 ultimately depend from  
independent claim 1. Independent claim 1 is allowable for the reasons set forth above.  
Insofar as claims 2-4 and 17 ultimately depend from independent claim 1, the same are  
also thought to be allowable.

1 The Examiner rejected claims 5-7, 10-15 and 24 under 35 U.S.C. § 103(a) as  
being unpatentable over Seel in view of Little. The Examiner contends that Little shows  
an elongated member which has lower ends received by pipe stubs. The Examiner  
argues that it would have been obvious to one skilled in the exercise arts to modify the  
5 Seel device by substituting a hollow pipe rod which engages an elongated rod as an  
obvious design variant to accommodate more weights. Applicant respectfully disagrees  
with the Examiner.

10 The Examiner's 103(a) argument depends from the Examiner's 102(b) argument  
set forth above. Applicant believes that the aforementioned has overcome the  
Examiner's rejection under 102(b). Therefore, claims 5-7, 10-15 and 24 are believed to  
be allowable over the Examiner's 103(a) rejection. Moreover, a person of ordinary skill  
in the art would not be inclined on any objective basis to combine the teaching of Seel  
and Little. Even if, for argument purposes, this were so, the combination would fail to  
15 teach or suggest the limitations of claims 5-7, 10-15 and 24. Claims 5-7 and 10  
specifically describe a first elongated tubular member. This tubular member is received  
by the pipe stub and has a grip portion where weights may be mounted thereon. Claim  
11 describes that a plurality of exercise attachment receiving means are provided on the  
foot support and the retaining portion. Claims 13-15 and 24 also recite a retaining  
20 portion. Applicant asserts, as more fully set forth above, that the prior art does not  
teach or otherwise suggest a retaining portion as specifically described in these claims.  
Accordingly, applicant believes that claims 5-7, 10-15 and 24 are allowable and the

1 Examiner is respectfully requested to reconsider the above-mentioned rejections and  
allow claims 5-7, 10-15 and 24.

5 The Examiner rejected claims 18, 19 and 25 under 35 U.S.C. § 103(a) as being  
unpatentable over Seel in view of Kost and Timko. The Examiner believes that Seel  
teaches a means to prevent slippage of the foot on the platform and that Kost teaches a  
deep recess on the foot platform to secure a user during exercise activity. The  
Examiner also believes that Timko teaches the use of a shallow recess on the platform  
for supporting a person. The Examiner argues that it would have been obvious to one  
10 skilled in the art to substitute a shallow recess for the Seel anti-slip surface to prevent  
foot slippage during exercise and yet be able to retain functionality of the device.  
Applicant respectfully disagrees with the Examiner.

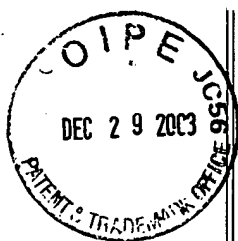
15 Here, as in the Examiner's prior rejection, the Examiner's 103(a) argument  
depends from the Examiner's 102(b) argument. Applicant believes that the  
aforementioned has overcome the Examiner's rejection under 102(b), and therefore,  
claims 18-19 are thought to be allowable. Moreover, a person of ordinary skill in the art  
would not be inclined on any objective basis to combine the teachings of Seel, Kost and  
Timko. Seel teaches an ankle exercise device. Kost teaches a medical device for  
20 turning a foot inward or outward in order to correct a crooked displacement of the feet.  
Timko teaches a foot pad for supporting a foot while an individual is getting a pedicure.  
A person skilled in the art who is addressing the problems associated with an ankle  
exercise device would not be inclined on any objective basis to consider references

1 such as Kost or Timko. Kost and Timko do not even remotely relate to an ankle exercise device.

5 Even if, for argument purposes, Seel, Kost and Timko could be combined in the manner suggested by the Examiner, the combination would fail to teach or suggest several of the limitations recited in claims 18, 19 and 25. Claim 18 specifically states that the foot supporting and retaining portion includes a recess portion having a forward end, a rearward end and opposite sides. Claim 19 states that upstanding walls are provided at the opposite sides of the recess portion. Independent claim 25 recites that a foot supporting and retaining portion for supporting and retaining a person's foot  
10 therein at least partially encloses a person's foot. Applicant asserts that none of the Examiner's cited art retains a person's foot in the manner specifically described in these claims. Accordingly, claims 18, 19 and 25 are believed to be allowable over the Examiner's cited art.

15 The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Seel in view of Little and further in view of Boggild. The Examiner states that Boggild discloses an exercise device having a flexible pole for the user's exercise and amusement. The Examiner then argues that it would have been obvious to one skilled in the art to utilize a flexible pole in Seel for exercise amusement purposes.  
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Again, applicant believes that claim 8 is allowable inasmuch as the Examiner's rejection depends from the Examiner's prior 102(b) argument set forth above. Moreover, the Examiner has not shown that a person of ordinary skill in the art would be inclined on any objective basis to combine the references as the Examiner suggested.  
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As stated above, Seel teaches an exercise device for an ankle. Boggild is not reasonably related to an exercise device for an ankle. Boggild teaches a gymnastic amusement device that has a fiberglass pole. A person of ordinary skill in the art would not consider a gymnastic amusement device such as that taught in Boggild when attempting to solve the problems associated with an ~~ankle~~ exercise device. Accordingly, applicant asserts that claim 8 is allowable over the prior art.

In light of the above amendments and remarks, applicant asserts that the claims are in condition for allowance. Applicant respectfully requests reconsideration and allowance of the same.

Respectfully submitted,

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#### CERTIFICATE OF MAILING

I hereby certify that the original of this AMENDMENT for STUART G. OXFORD, Serial No. 09/772,029, was mailed by first class mail, postage prepaid, to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of December, 2003.

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